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JPMorgan Chase Bank, N.A., *for itself, erroneously sued as* JP Chase Home Finance, *and as Successor by Merger to* Chase Home Finance LLC, and JPMC Specialty Mortgage LLC, formerly known as WM Specialty Mortgage LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDWARD C. TIDWELL,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A., CHASE HOME FINANCE LLC, JP CHASE HOME FINANCE, JPMC SPECIALTY MORTGAGE LLC, FORMERLY KNOWN AS WM SPECIALTY MORTGAGE LLC, HOMESALE, INC., RUST CONSULTING, INC., PROMMIS SOLUTIONS, LLC, CAL-WESTERN RECONVEYANCE CORPORATION, NRT, LLC, COLDWELL BANKER RESIDENTIAL BROKERAGE COMPANY, VALLEY OF CALIFORNIA, INC., COLDWELL BANKER RESIDENTIAL BROKERAGE CORPORATION, and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 3:13-cv-02621-EMC

JUDGE: Hon. Edward M. Chen

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COMPLAINT PURSUANT TO FRCP 12(B)(6) BY DEFENDANTS JPMORGAN CHASE BANK, N.A., *FOR ITSELF, ERRONEOUSLY SUED AS* JP CHASE HOME FINANCE, *AND AS SUCCESSOR BY MERGER TO* CHASE HOME FINANCE LLC, AND JPMC SPECIALTY MORTGAGE LLC, FORMERLY KNOWN AS WM SPECIALTY MORTGAGE LLC

[Filed concurrently with Notice of Motion and Motion to Dismiss, Request for Judicial Notice and Proposed Order]

[NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT]

DATE: September 26, 2013
TIME: 1:30 p.m.
CTRM: 5, 17th Floor

Action Filed: June 7, 2013

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MEMORANDUM OF POINTS AND AUTHORITIES

Defendants JPMorgan Chase Bank, N.A. ("JPMorgan"), *for itself, erroneously sued as* JP Chase Home Finance, *and as Successor by Merger to* Chase Home Finance LLC, and JPMC Specialty Mortgage LLC, formerly known as WM Specialty Mortgage LLC ("JPMC," and collectively "Defendants"), respectfully submit the following Memorandum of Points and Authorities in support of their Motion to Dismiss the Complaint ("Complaint") of plaintiff Edward C. Tidwell ("Plaintiff") under Federal Rules of Civil Procedure ("FRCP") section 12(b)(6) on the grounds that the Complaint fails to state a claim upon which relief can be granted.

I. SUMMARY OF ARGUMENT

This is Plaintiff's fifth lawsuit related to that loan secured by real property located at 5157 Roundup Way, Antioch, California (the "Property"), and the valid nonjudicial foreclosure conducted on the Property. Plaintiff voluntarily dismissed the first two lawsuits as against these Defendants, the third lawsuit filed in the federal court was decided in Defendants' favor on the federal claims alleged in that case, and the fourth lawsuit was decided in favor of JPMC.

Undeterred, Plaintiff filed the instant action on or about June 7, 2013, in yet another attempt to set aside the nonjudicial foreclosure sale. Plaintiff's claims in this lawsuit are repetitive of the claims already decided in his third and fourth lawsuits, and the validity of the foreclosure sale has been adjudicated in the unlawful detainer action. Further, the causes of action alleged by Plaintiff are without merit. Plaintiff still fails to set forth facts to state a cognizable cause of action against Defendants. Therefore, this Motion to Dismiss should be granted as to the entire Complaint without leave to amend.

II. SUMMARY OF RELEVANT FACTS

Plaintiff obtained a residential loan in the sum of $455,000.00 ("Loan"), secured by a deed of trust ("DOT") encumbering the Property that was recorded on or about August 15, 2005, with the Contra Costa County Recorder's Office as instrument

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number 2005-0305754. (Comp., Exh. C.) The DOT identifies Argent Mortgage Company, LLC ("Argent") as the lender and beneficiary, Town and Country Title Services, Inc. ("T & C") as trustee, and Plaintiff as the borrower. *Id.*

Plaintiff subsequently defaulted on the Loan. A Notice of Default and Election to Sell Under Deed of Trust ("NOD #1") in connection with the DOT was recorded on or about May 8, 2006, with the Contra Costa County Recorder's Office as instrument number 2006-0143809. (Comp., Exh. J.) Subsequently, Plaintiff made payment on the Loan (Comp., Exh. L), and a Notice of Rescission of Notice of Default was recorded on or about May 8, 2006, with the Contra Costa County Recorder's Office as instrument number 2006-0143809, rescinding NOD #1. (Comp., Exh. M.)

After NOD #1 was rescinded, Plaintiff again defaulted on the Loan, and a second Notice of Default ("NOD #2") was recorded on or about October 16, 2006, with the Contra Costa County Recorder's Office as instrument number 2006-0327557. (Comp., Exh. I.) An Assignment of the DOT was recorded on or about May 12, 2006, with the Contra Costa County Recorder's Office as instrument number 2006-0150686-00 (Comp., Exh. D) and another recorded on December 6, 2006, with the Contra Costa County Recorder's Office as instrument number 2006-0389226. (Comp., Exh. F.) The Assignment memorialized the transfer of the beneficial interest in the DOT to WM Specialty Mortgage LLC. *Id.* A Substitution of Trustee was recorded on December 6, 2006, with the Contra Costa County Recorder's Office as instrument number 2006-0389227, identifying the new trustee under the terms of the DOT as Cal-Western Reconveyance Corporation (Comp., Exh. G.) A Notice of Trustee's Sale ("NOTS") was recorded on or about May 27, 2010, in the Contra Costa County Recorder's Office as instrument number 2010-0106061. (Comp., Exh. Q.)

Plaintiff failed to cure the default and the Subject Property was sold at public auction on February 4, 2011, which was memorialized by a Trustee's Deed Upon Sale ("TDUS") recorded on February 22, 2011, in the Contra Costa Recorder's Office as instrument number 2011-0038938. (Comp., Exh. O.) The TDUS reflects that JPMC,

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formerly known as WM Specialty Mortgage LLC, was the purchaser at the foreclosure sale. *Id.* JPMC is a Delaware LLC. (Defendants' Requests for Judicial Notice ("RJN"), Exh. 11.)

On or around March 8, 2011, JPMC commenced an unlawful detainer action in the Contra Costa Superior Court, Pittsburg Judicial District, Case No. PS11-0418. (RJN, Exh.1.) The matter proceeded to judgment, the court having granted the Motion for Summary Judgment of JPMC on November 4, 2011. (RJN, Exh. 2.) In particular, the Court adjudged that title to the Subject Property was duly perfected and the Subject Property was acquired in accordance with Cal. Civil Code § 2924. *Id.*

III. PROCEDURAL HISTORY

Plaintiff originally filed a lawsuit in the Contra Costa Superior Court on or about March 10, 2008, in a case entitled *Tidwell v. Argent Mortgage, et al.*, case number CIVMSC08-00573. The case was subsequently dismissed by the Court on or about August 27, 2009, for Plaintiff's failure to prosecute. (Comp., ¶ 33.)

Plaintiff then filed a second lawsuit in the Contra Costa Superior Court on or about July 8, 2010, in the case entitled *Tidwell v. JPMorgan Chase Bank, N.A., et al.* Plaintiff subsequently dismissed JPMorgan Chase Bank, N.A., JPMorgan Chase & Co., California Reconveyance Company, and JPMC Specialty Mortgage LLC from the lawsuit on or about August 29, 2010. (Comp., ¶ 33.)

Plaintiff filed his third lawsuit in the United States District Court for the Northern District of California on or about March 11, 2011, in a case entitled *Tidwell v. JPMorgan Chase Bank, N.A., et al.*, case number 11-CV-01145 (the "Prior Federal Action"). (Comp., ¶ 33; RJN, Exh. 3.) On June 20, 2011, on Defendants' motion, the district court dismissed Plaintiff's federal claims with prejudice, and state law causes of action without prejudice to Plaintiff's re-filing them in state court. (RJN, Exh. 4 (Order) and Exh. 5 (Judgment).)

Plaintiff filed his fourth lawsuit on or about October 28, 2011, in the Contra Costa Superior Court, entitled *Tidwell v. JPMorgan Chase & Co., et al.*, case number

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C11-02461 (the "State Action"). (Comp., ¶ 33.) The Second Amended Complaint ("SAC") in the State Action alleged claims for violation of Cal. Corporations Code §§ 17050, 17051, 17001(ap), 2105, and 17456, breach of contract, fraud, negligence, intentional misrepresentation, civil conspiracy, to vacate the trustee's sale under Civil Code § 3412 et seq., violation of Business & Professions Code § 17200, unjust enrichment, an accounting, declaratory relief, and injunctive relief. (RJN, Exh. 6.) Plaintiff attempted to prevail against JPMC by way of default and dismissed all other of these Defendants. (RJN, Exh. 7.) However, the court set aside the default against JPMC (RJN, Exh. 8) and then it sustained its demurrer as to the entire SAC without leave to amend (RJN, Exh. 9). The judgment in favor of JPMC is currently on appeal. (RJN, Exh. 10.)

On or about June 7, 2013, Plaintiff filed this, his fifth lawsuit, relating to the Loan and foreclosure. Plaintiff's federal claims in this action are barred by res judicata based upon the dismissal of Plaintiff's federal claim in the Prior Federal Action, and the entire complaint is barred by res judicata as against JPMC.

IV. STANDARD FOR A MOTION TO DISMISS

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) may be brought when a plaintiff fails to state a claim upon which relief can be granted. A complaint attacked by a Rule 12(b)(6) motion to dismiss requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1959 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Id*; *see also Ashcroft v. Iqbal,* 129 S.Ct. 1937 (2009).

Also, on a motion to dismiss, a court may take judicial notice of matters of public record in accordance with Federal Rule of Evidence 201 without converting the motion to dismiss to a motion for summary judgment. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001) (*citing Mack v. South Bay Beer Distributors, Inc.,*

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798 F.2d 1279, 1282 (9th Cir. 1986)). Courts may take judicial notice of documents outside of the complaint that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(d); *Wietschner v. Monterey Pasta Co.*, 294 F.Supp.2d 1117, 1109 (N.D. Cal. 2003).

V. THE FEDERAL CLAIMS ARE BARRED BY THE DOCTRINE OF RES JUDICATA AS TO ALL DEFENDANTS, AND THE ENTIRE COMPLAINT AGAINST DEFENDANT JPMC SPECIALTY MORTGAGE LLC IS BARRED BY RES JUDICATA

"Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." *Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir.1997); see also *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (Res judicata bars all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties ... on the same cause of action."); *Gregory v. Widnall*, 153 F.3d 1071, 1074 (9th Cir.1998) (holding that res judicata bars consideration of a hostile work environment claim that could have been raised in a prior discrimination action between the same parties on essentially the same facts)

The doctrine is applicable whenever there is "(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." *Western Radio, supra.* Whether the plaintiff has stated in the instant suit a cause of action different from those raised in his first suit is determined by applying several criteria to determine whether successive lawsuits involve a single cause of action:

> "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts."

Harris v. Jacobs, 621 F.2d 341, 343 (9th Cir. 1980). The last of these criteria is the most important. *Id.*; see also *Feminist Women's Health Ctr. v. Codispoti*, 63 F.3d 863, 868 (9th Cir.1995) (holding that res judicata bars subsequent action when the plaintiff "had to produce substantially the same evidence in both suits to sustain its case").

The Supreme Court has made clear that there is "no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of res judicata." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 401, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981) (internal quotation marks and citation omitted). The Court explained that "[t]he doctrine of res judicata serves vital public interests beyond any individual judge's ad hoc determination of the equities in a particular case" and rejected any equitable exceptions to the application of res judicata based on "public policy" or "simple justice." *Id.*

1. Plaintiff's federal claims have already been decided in favor of JPMorgan Chase Bank, N.A., and Chase Home Finance LLC in the prior federal action.

Here, with the exception of Plaintiff's meritless RESPA claim based upon his purported QWR (which is addressed in Section VII, *infra*), all federal claims brought by Plaintiff or that Plaintiff could have brought have already been decided in Defendants' favor in the Prior Federal Action. Plaintiff filed his complaint in that case on March 10, 2011, based upon substantially the same facts alleged herein, after foreclosure, alleging federal claims violation of the Home Ownership Equity Protection Act ("HOEPA"), 15 U.S.C. § 1639, et seq., violation of RESPA, violation of TILA, and violation of RICO. (RJN, Exh. 3.) Defendants, including JPMorgan and Chase Home Finance LLC, moved to dismiss that complaint, and their motion was granted without leave to amend as to the federal causes of action, with the court declining jurisdiction over the state causes of action. (RJN, Exhs. 4 and 5.)

Plaintiff may argue that he could not have alleged a claim for violation of RESPA in the Prior Federal Action because that action was filed on March 5, 2011

(RJN, Exh. 3), and the Consent Order was issued on April 13, 2011 (Comp., Exh. A.). However, the Prior Federal Action was not dismissed until June 20, 2011 (RJN, Exh. 4), and Plaintiff alleges that Defendants violated the Consent Order based upon their acts leading up to, and including, the foreclosure that occurred on February 4, 2011 (Comp., ¶¶ 117-118, and its Exh. O.) Therefore, Plaintiff had more than two months during which he could have sought leave to amend his complaint to add his claim for violation of the Consent Order that he alleged in the Complaint herein.

Because all of Plaintiff's federal claims in this lawsuit, other than his RESPA claim relating to his purported QWR, were already raised and dismissed with prejudice in the Prior Federal Court Action, or could have been raised in that action, all federal claims in the Complaint herein other than his second claim for violation of RESPA based upon the purported QWR must be dismissed based upon res judicata.

2. The entire complaint is res judicata as to JPMC Specialty Mortgage LLC based upon judgment entered in the Contra Costa Superior Court.

Plaintiff's claims against JPMC are based upon the same nucleus of facts alleged in his last lawsuit filed in the State Action, they involve infringement of the same right, Plaintiff is presenting the same evidence in both cases, and the finality of the judgment in favor of JPMC in the State Action would be a nullity if Plaintiff is allowed to prosecute this lawsuit against JPMC. In both actions, Plaintiff alleges defects with respect to the order of the recording of the foreclosure instruments (RJN, Exh. 6, ¶ 34; Complaint, ¶ 43-45), defects with respect to Ms. Price's signing authority based upon her deposition testimony in an unrelated case (RJN, Exh. 6, ¶ 36-38; Complaint, ¶ 46-50, 56); JPMC lacked authority to conduct business in California (RJN, Exh. 6, ¶ 40-43; Complaint, ¶ 201), violation of California Civil Code § 2923.5, 2923.52-55 and 2924 (RJN, Exh. 6, ¶ 61-78; Complaint, ¶ 68-81, 142-150), and violations of Penal Code § 115 (RJN, Exh. 6, ¶ 2; Complaint, ¶¶ 153-173),

Plaintiff has had his day in court in the State Action and lost when JPMC's

demurrer to the SAC was sustained without leave to amend. Plaintiff cannot be allowed to take another bite at the apple by simply filing essentially the same action in the District Court. Because Plaintiff is seeking to try claims here that he already tried and lost in the State Action, or had the opportunity to try but did not, the entire Complaint herein should be dismissed against JPMC based upon res judicata.

VI. PLAINTIFF'S FIRST CLAIM FOR VIOLATION OF 12 U.S.C. §§ 1813 AND 1818, ET SEQ. FAILS

A. No private right of action under the cited statutes.

Plaintiff's first claim is alleged against defendants JPMorgan and Rust Consulting, Inc. (Comp., ¶ 119.) In it, Plaintiff seeks recourse for JPMorgan's alleged violation of the terms of a Consent Order between the Office of the Comptroller of the Currency ("OCC") and JPMorgan issued pursuant to 12 U.S.C. §§ 1313(a) and 1818(b) on April 13, 2011. (Comp., Exh. A.) Plaintiff alleges that the foreclosure on the Property on February 4, 2011, was in violation of the Consent Order entered into two months later (Comp., ¶ 117).

Notwithstanding the fact that JPMorgan could not have violated a Consent Order that did not exist at the time of the foreclosure sale, and Plaintiff's failure to identify the provisions of the Consent Order allegedly violated, Plaintiff's first claim fails because no private right of action is authorized under the Consent Order or 12 U.S.C. §§ 1813 and 1818, et seq.

The Stipulation and Consent to the Issuance of a Consent Order (Comp., Exh. A), Article II ("Agreement"), states at its paragraph (7):

> "The terms and provisions of the Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. *Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit*

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or any legal or equitable right, remedy or claim under this Stipulation or the Consent Order." (Emphasis added.)

Likewise, 12 U.S.C. §§ 1813 and 1818, et seq., do not authorize private rights of action. Both §§ 1813 and 1818 are found within Title 12 of the U.S. Code, Chapter 16, the "Federal Deposit Insurance Corporation" (§§ 1811- 1835a). Section 1813 merely provides definitions for terms used within Chapter 16, and § 1818 is entitled "Termination of status as insured depository institution," and neither statute contains any enforcement provisions. The only enforcement section, § 1831aa, entitled "Enforcement of Agreements," dictates that only the appropriate Federal banking agency for a depository institution may enforce the terms of any condition imposed in writing by the agency on the depository institution, or any written agreement entered into between the agency and the depository institution. There is nothing within Title 16 that authorizes a private claim to enforce its provisions.

VII. PLAINTIFF'S SECOND CLAIM FOR VIOLATION OF 12 U.S.C. §§ 2601 AND 2605, ET SEQ. (RESPA) FAILS

Plaintiff's claim under the RESPA fails because: (1) the alleged qualified written request ("QWR") was submitted on July 5, 2012, more than a year after the foreclosure on February 4, 2011, and (2) Plaintiff did not demonstrate noncompliance with RESPA or any damages resulting from noncompliance.

To state a claim for violation of RESPA, a plaintiff must: (1) allege a breach of RESPA duties; and (2) allege that the breach resulted in actual damages. *See Hamilton v. Bank of Blue Valley,* 746 F.Supp.2d 1160, 1175 (E.D. Cal. 2010); *see also,* 12 U.S.C. § 2605(f)(1)(A)("Whoever fails to comply with this section shall be liable to the borrower ... [for] any actual damages to the borrower as a result of the failure."); *Cortez v. Keystone Bank*, 2000 WL 536666, *12 (E.D.Pa. May 2, 2000) (a claimant under 12 U.S.C. § 2605 must allege a pecuniary loss attributable to the alleged violation)."

A. The QWR is invalid because it was submitted more than one year after the foreclosure sale.

RESPA requires that loan servicers provide a timely written response to a QWR from a borrower. 12 U.S.C. § 2605(e)(1), (2). The federal regulations interpreting RESPA provide that "[a] written request does not constitute a qualified written request if it is delivered to a servicer more than 1 year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable." 24 C.F.R. § 3500.21(e)(2)(ii).

Here, the trustee's sale occurred on February 4, 2011 (Comp., Exh. O (TDUS)), after which any servicer-borrower relationship between Plaintiff and JPMorgan [as the Loan's servicer] extinguished, and thus JPMorgan had no duty to respond to the alleged QWR allegedly sent on July 5, 2012 (Comp., ¶ 124), more than a year after foreclosure. Once the Property was sold at the non-judicial foreclosure, JPMorgan's obligation to service ceased altogether as the Loan ceased to exist. Therefore, Plaintiff did not submit a QWR as defined by 24 C.F.R. § 3500.21 (e)(2)(ii).

B. Plaintiff has failed to demonstrate noncompliance with RESPA or any damages resulting from noncompliance.

In the instant case, Plaintiff has not demonstrated that he submitted a proper QWR that would require a response. A QWR requests information relating to the servicing of a loan. 12 U.S.C. § 2605(e)(1)(A). "A QWR should include statements identifying the reasons why the borrower believes her account is in error." *Beall v. Quality Loan Service Corp.*, 2011 WL 1044148, *3-4 (S.D. Cal. March 21, 2011). To be a sufficiently pleaded claim for a violation of RESPA based on failure to respond to a QWR, a plaintiff must plead submission of a QWR that complied with the statutory requirements. *Farmer v. Ocwen Loan Servicing, LLC*, 2010 WL 489701 at *7 (E.D. Cal. 2010). Entirely missing from the Complaint is a copy of the QWR or sufficiently pled facts demonstrating that the QWR met the statutory requirements.

JPMorgan responded to the purported QWR by its counsel's letter to Plaintiff

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dated February 26, 2013 (Comp., Exh. K, the "QWR Response"). The QWR Response fully describes the deficiencies in Plaintiff's purported QWR, including its failure to include a statement of the reasons why he believed the account was in error, any explanation as to why the demands for documents were made, the failure to allege any improprieties regarding the foreclosure sale process, and requests for documents and information unrelated to the servicing of the Loan. (*Id.*) Plaintiff alleges that the purported QWR was sent "in accordance with the OCC and the FRB's (federal bank regulators) requirements outlined to submit a Request for Review Form for an Independent Foreclosure Review to assess Plaintiff's financial injuries as a result of" the foreclosure. (Comp., ¶ 125.) Plaintiff has not alleged, nor can he, that Independent Foreclosure Review pursuant to the OCC Consent Order authorizes him to directly request information from JPMorgan, or that it has anything to do with RESPA and QWRs.

Although Plaintiff generally alleges that has suffered injuries, harm and irreparable damages as the result of JPMorgan's alleged non-compliance with RESPA (Comp., ¶139), he does so in purely conclusory fashion. In reality, Plaintiff could not have been damaged in any way by Defendants' alleged non-compliance. Plaintiff mailed his purported QWR on July 5, 2012, and JPMorgan, through its attorney, sent its response to the purported QWR on February 26, 2013. The foreclosure occurred more than a year before Plaintiff sent his purported QWR, so an earlier response would not have prevented the foreclosure. Plaintiff has suffered no damages related to his purported QWR. Therefore, he cannot state a claim for damages for non-compliance with RESPA.

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VIII. PLAINTIFF'S THIRD CLAIM FOR VIOLATION OF CALIFORNIA CIVIL CODE §§ 2923.5, 2923.52-55, AND 2924 FAILS

A. The Notice of Default was recorded before Civil Code §§ 2923.5 and 2923.52-55 were enacted.

Plaintiff alleges that Defendants violated California Civil Code §§ 2923.5 and 2923.52-55, by issuing and recording a notice of default in 2006 without contacting him to explore alternatives to foreclosure. (Comp., ¶¶ 68-81.) The subject Notice of Default upon which the Trustee's Sale was conducted was recorded October 16, 2006. (Comp., Exh. I.) However, § 2923.5 did not exist until 2008, nearly two years after the Notice of Default was issued. *See* Cal. *Civ. Code* §§ 2923.5. Sections 2923.52-55 did not exist until 2009. *See* Cal. *Civ. Code* §§ 2923.52-55. Moreover, §§ 2923.52-54 were repealed in 2011.

Thus, Defendants could not have violated statutes which did not exist at the time the Notice of Default was recorded, and they cannot be held liable for the violation of statutes that were repealed before the Complaint was filed.

B. Plaintiff has not alleged a violation of Civil Code § 2924.

Plaintiff's allegation that Defendants have violated § 2924 is predicated entirely upon his contention that Defendants violated §§ 2923.5 and 2923.52-55, i.e., Plaintiff contends that by violating §§ 2923.5 and 2923.52-55, Plaintiff's foreclosure was in violation of § 2924. (Comp., ¶¶ 73-81, 97, 143, 147-148). Plaintiff has not alleged any independent basis for a wrongful foreclosure claim based upon § 2924. Therefore, because §§ 2923.5 and 2923.52-55 did not exist when the Notice of Default was recorded, Plaintiff cannot state a claim for wrongful foreclosure based upon a violation of 2924.

IX. PLAINTIFF'S FOURTH CLAIM FOR VIOLATION OF CALIFORNIA PENAL CODE § 115 FAILS

Penal Code § 115, paragraph (a), holds that "[e]very person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in

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any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony." The allegations in the claim relating to the alleged falsity of recorded instruments are based upon two contentions: (1) Plaintiff's contention that the recorded instruments signed by or on behalf of Chase Home Finance LLC are invalid because Chase Home Finance LLC was not registered to do business in California at the time they were signed (Comp., ¶ 156), and (2) Plaintiff alleges that documents signed by Dana A. Rosas are faulty (Comp., ¶ 163.)

First, it should be noted that neither issue qualifies as a violation of Penal Code § 115. Plaintiff never alleges that any of the recorded instruments is false (i.e., not what it is purported to be) or forged (e.g., not signed by the person purported to have signed it). Rather, Plaintiff alleges that there exists a defect in several of the instruments that makes them void or voidable. Those contentions are without merit.

A. Chase Home Finance LLC was not required to be licensed to do business in California.

In support of his claim, Plaintiff points to Exhibit B to his Complaint, a Certificate of No Record from the California Secretary of State indicating that Chase Home Finance LLC filed a Certificate of Cancellation on January 20, 2005, and is no longer authorized to transact *intrastate business* in California, and a Certificate of No Record Limited Liability Company for entities named JPM Mortgage LLC and JPMC indicating that they are not registered to transact *intrastate business* in California. From those records, Plaintiff concludes that Chase Home Finance LLC was prohibited from transacting business in California. This contention is an extension of his seventh claim for violation of Corporations Code §§ 17050, 17051 and 17456, in which he contends that "the State of California and the Secretary requires that every operating LLC be formed and organized under the Beverly-Killea Limited Liability Company as described in California Corporation Code §§ 17050 and 17051[.]" (Comp., ¶ 199.)

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Plaintiff is wrong because Chase Home Finance LLC and JPMC did not transact *intrastate business* in California as that term is defined by statute.

California law requires registration for foreign LLCs "transacting intrastate business" in California. However, transacting "intrastate business" does not encompass all possible business activities in California, but has a specific and limited meaning: to transact intrastate business means "to enter into repeated and successive transactions of business in [California], other than in interstate or foreign commerce." Corp. Code § 17001(ap) (emphasis added). Corporations Code § 17001(ap)(2) provides further that it "shall not be considered to be transacting intrastate business" if it conducts one or more types of activity expressly listed in the statute as non-intrastate business." Exempted activities include "[c]reating or acquiring evidences of debt or mortgages, liens, or security interests in real or personal property" (Corp. § 17001(ap)(2)(G), "[s]ecuring or collecting debts or enforcing mortgages and security interests in property securing the debts" (Corp. Code § 17001(ap)(2)(H)) and "[m]aintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes." Corp. Code § 17001(ap)(2)(A). Therefore, the alleged activities allegedly engaged in by Chase Home Finance LLC, the Loan's servicer, and JPMC, the assigned beneficiary under the DOT and the grantee at the foreclosure sale, are exempt from the restrictions from conducting "intrastate business" within California. Accordingly, recorded instruments involving Chase Home Finance LLC and JPMC are not false or forged and were not recorded in violation of Penal Code § 115.

B. Plaintiff's contentions that Tamara Price was not authorized to sign the recorded instruments is lacking in foundation and authority.

Plaintiff also alleges that certain of the relevant recorded instruments violate Penal Code § 115 because: (1) the Substitution of Trustee signed by Dana Rosas contains the handwritten addendum, "effective 10/15/2006" (Comp., ¶ 165), (2) Tamara Price allegedly did not have signing authority, and (3) because the notary

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acknowledgement of Ms. Price's signature was allegedly defective. Each of the three contentions lacks merit and they do not constitute violations of Penal Code § 115. Moreover, Plaintiff has not been damaged or prejudiced in any way as a result of the acts complained of.

1. The inclusion of "effective 10/15/2006" does not invalidate the instrument or constitute a violation of Penal Code § 115.

In paragraph 165 of the Complaint, Plaintiff alleges that the Substitution of Trustee recorded on December 6, 2006, was "obviously tampered with" in that it contains the handwritten statements, "effective 10/15/2006." (Comp., ¶ 165, Exh. G.) It should be noted that the Assignment of Deed of Trust recorded on December 6, 2006, contains the same statement, "effective 10/15/2006." (Comp., Exh. F.)[1] However, the inclusion of the retroactive effective date does not invalidate either instrument. California authority holds that "a party of a contract may ... fix retroactive dates of execution for a contract." *Du Frene v. Kaiser Steel Corp.*, 231 Cal.App.2d 452, 458 (1964); see also *National Parks & Conservation Assn. v. County of Riverside*, 42 Cal.App.4th 1505, 1522 (1996) [parties are "within their rights" to make their agreement effective on a date other than the date they executed it].)

Therefore, the inclusion of language in the Substitution of Trustee and the Assignment of Deed of Trust making both instruments retroactively effective to October 15, 2006, does not invalidate either instrument, and does not render either document false or forged under Penal Code § 115.

[1] In ¶ 165 of the Complaint, Plaintiff also references a Substitution of Trustee recorded on December 5, 2006, in the Riverside County Recorder's Office that was signed by Ms. Rosas that also contains the handwritten statement "effective 10/15/2006." (Comp., ¶ 165, Exh. E.) It should be noted that Substitution of Trustee is entirely irrelevant as it does not relate to the subject DOT, the subject parties, or the subject property.

2. Plaintiff's contention that Ms. Price was not authorized to sign the relevant instruments is based upon his mischaracterization of her deposition testimony in an unrelated case.

Plaintiff contends that Ms. Price was not authorized to sign the Substitution of Trustee (Comp., Exh. G) and the Assignment of Deed of Trust (Comp., Exh. F) based upon his mischaracterization of deposition testimony that she gave in an unrelated case. Ms. Price signed the Substitution of Trustee and the Assignment of Deed of Trust on October 27, 2006. (*Id.*) In her deposition testimony in the unrelated case, regarding an irrelevant affidavit that she signed, that was not produced by Plaintiff herein, Ms. Price was asked whether, as of February 27, 2007, she was a Vice President of AMC Mortgage Services. She responded affirmatively for purposes of having signing authority. (Comp., Exh. H, p. 14:3-10.) Plaintiff mischaracterizes Ms. Price's response as her stating that she commenced being a Vice President with signing authority on February 26, 2007. (Comp., ¶ 168.) However, the question was not when Ms. Price became a Vice President for AMC Mortgage Services; rather, she was only asked whether, as of February 26, 2007, she was a Vice President for AMC Mortgage Services. The logical explanation as to why she was asked specifically about the date of February 26, 2007, was because that was the day that she signed an affidavit that was made an exhibit to a motion for summary judgment filed on March 23, 2007. (Comp., Exh. H, p. 13:17-25, 21:24-22:9.) Ms. Price's deposition answer provides no support for Plaintiff's conclusion that she was not a Vice President for AMC Mortgages when she signed the Substitution of Trustee and the Assignment of Deed of Trust in this case on October 27, 2006.

3. Plaintiff's contention that the notary acknowledgment for the Substitution of Trustee and the Assignment of Deed of Trust are defective, even if true, would not invalidate the instruments.

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Plaintiff also alleges that Mr. Price was not authorized to sign the Assignment of Deed of Trust and the Substitution of Trustee because the documents were not executed in the presence of a Notary Public. (Comp., ¶ 166.) Assuming, *arguendo*, that the notary acknowledgment is defective, all that would mean is that the instrument(s) with the defective notary acknowledgment were not entitled to be recorded and thus are not capable of imparting constructive notice. However, the instruments are still valid as between the parties to the instruments and to all those having actual notice of its existence. *Parkside Realty Co. v. McDonald*, 166 Cal. 426, 431; *Kimbro v. Kimbro*, 199 Cal. 344, 349; and *Johndrow v. Thomas*, 31 Cal.2d 202, 206. It has been stated that, 'the acknowledgment of a deed is not essential to its validity. The acknowledgment of a deed is merely evidentiary in character and is required only to entitle it to be recorded so as to render it competent evidence of the conveyance without further proof' *Osterberg v. Osterberg*, 68 Cal.App.2d 254, 262, 156 P.2d 46, 50. See also *Williston v. City of Yuba City*, 1 Cal.App.2d 166, 171, 36 P.2d 445. Where a loss is sustained by reason of a false certificate of acknowledgment of a forged instrument the measure of damages recoverable for such official misconduct by the notary is determined by the evaluation of the rights which would have accrued to the injured party had the underlying instrument been valid. *Heidt v. Minor*, 113 Cal. 385; facts set forth at 89 Cal. 115. The clear implication from this rule is that there could be no recovery against the notary or his surety for his official misconduct in executing a false acknowledgment where the underlying instrument is valid, for no measurable damages would result therefrom (See Cal. Govt. Code§ 8214). *Kirsch v. Barnes* (N.D. Cal. 1957) 153 F.Supp. 260, 263.

Thus, even if the notary acknowledgments to the Assignment of Deed of Trust recorded on December 6, 2006 and the Substitution of Trustee recorded on December 6, 2006, are considered defective, the acknowledgements have no bearing upon the validity of the instruments themselves. As a result, the instruments themselves cannot be considered false or forged, and therefore are not in violation of Penal Code § 115.

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X. PLAINTIFF'S FIFTH CLAIM FOR MISREPRESENTATION FAILS

Plaintiff has failed to comply with the particular pleading requirements for an actionable fraud or negligent misrepresentation claim. In order to fulfill these requirements, the complaint must state: 1) a false representation of a material fact, 2) knowledge of the falsity (scienter), 3) intent to induce another into relying on the representation, 4) reliance on the representation, and 5) resulting damage. *Ach v. Finkelstein* (1968) 264 Cal.App.2d 667, 674. The elements of negligent misrepresentation are the same as fraud except for the requirement of scienter; for purposes of negligent misrepresentation, it is sufficient that. *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 181-182; *see also R&B Auto Center Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 377. The particularity requirement for fraud mandates pleading facts that "the times, dates, places, benefits received and other details of the alleged fraudulent activity." *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993).

Additionally, Rule 9(b) of the Federal Rules of Civil Procedure mandates that a plaintiff alleging fraud must "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. Pro. 9(b). Rule 9(b) serves to furnish defendant with notice, but also imposes the additional obligation on plaintiff to "aver with particularity the circumstances constituting the fraud." *In Re GlenFed Inc. Securities Litigation*, 42 F.3d 1541, 1547 (en banc) (9th Cir. 1994). The *GlenFed* court interpreted 9(b) to require allegations not only as to the time, place and content of the alleged misrepresentation, but also the circumstances indicating false statements: "[t]o allege fraud with particularity, a plaintiff must set forth more than the mutual facts necessary to identify the transaction; the plaintiff must set forth what is false or misleading about a statement, and why it is false. In other words, the plaintiff must set forth an explanation as to why the statements or omissions complained are misleading." *Id.* at 1547-48; *see also Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004) ("To avoid dismissal for inadequacy under Rule 9(b), [the]

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complaint would need to state the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation.") (internal quotations omitted).

In addition, to assert a fraud action against a corporation, a plaintiff must also allege the names of the person or persons who allegedly made the fraudulent representation, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. *In Re GlenFed Inc. Securities Li.t*, 42 F.3d 1541, 1547 (9th Cir. 1994); *see also Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993).

Here, Plaintiffs claim is a bundle of unclear, generalized, conclusory and generally untrue allegations that fail to come close to meeting the requisite standard for pleading a claim for misrepresentation. Plaintiff's allegations in ¶¶ 176-179 fail to identify a specific false representation, the identity of the person that made the alleged false representation, when and how the representation was made, who that person was authorized to speak on behalf of, how Plaintiff relied upon the alleged false representation, and how the false representation caused Plaintiff to suffer damages.

For example, in ¶ 176, Plaintiff alleges that the document entitled "Important Notice Regarding Your Occupancy of the Property" (Comp., ¶ S) constitutes a misrepresentation because he contends that the assertion in the notice that the Property was sold at foreclosure. However, notwithstanding that Plaintiff is challenging the validity of the sale, the Property was in fact sold at foreclosure as evidenced by the Trustee's Deed Upon Sale attached as Exhibit O to his Complaint, so the representation is not false. Moreover, Plaintiff fails to identify the specific representations contained in the notice, which was created after the foreclosure had occurred, that he contends are false. Further, it is unclear whether he is alleging the alleged misrepresentations were made by employees of JPMorgan, its agents, or Coldwell Banker. Further, he fails to allege how he detrimentally relied upon the notices, and how the notices caused him harm, given that the notices were posted after foreclosure had occurred.

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Likewise, in ¶ 177, Plaintiff alleges as broadly as possible that JPMorgan, its attorneys and third-parties on its behalf made representations to Plaintiff regarding foreclosure that were false, and regarding the allegedly faulty Substitution of Trustee, Assignment of Deed of Trust, Notice of Default, and Notice of Trustee's Sale. Again, Plaintiff never specifically cites the alleged representation at issue or any of the required details concerning the representation.

In ¶¶ 178 and 179 fail to allege any misrepresentations, and in ¶¶ 180-185, Plaintiff merely restates his defective contentions alleged in his third claim for Violation of Civil Code §§ 2923.5, 2923.52-55 and 2924, and his fourth claim for violation of Penal Code § 115.

Because Plaintiff has not, and cannot, state a claim for intentional or negligent misrepresentation with the requisite specificity required by law, his fifth claim for misrepresentation should be dismissed.

XI. PLAINTIFF'S SIXTH CLAIM FOR UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200-17210, ET SEQ., FAILS

A. Plaintiff fails to state facts constituting unfair business practices.

Plaintiff's ninth claim alleges unfair business practices under California Business and Professions Code §§ 17200 ("UCL"). The UCL defines "unfair competition" as one of the following wrongs: (1) an "unlawful" business act or practice; (2) an "unfair" business act or practice; (3) a "fraudulent" business act or practice; (4) "unfair, deceptive, untrue or misleading advertising"; and (5) any act prohibited by section 17500-17577. *See California Business and Professions Code* § 17200.

In order to hold Defendants liable for any of these business acts or practices, Plaintiff must allege that Defendants participated in these practices. *See Emry v. Visa International Service Ass'n*, 95 Cal. App. 4th 952, 960 (2002) ("*Emry*") (a defendant's liability must be based on his personal "participation in the unlawful practices" and "unbridled control" over the practices that are found to violate section 17200.)

Furthermore, in order to allege an unlawful business practice under the UCL, the plaintiff must allege facts to demonstrate that the practice violates an underlying law. *See People v. McKale*, 25 Cal.3d 626, 635 (1979). These facts must be alleged with reasonable particularity. *Khoury v. Maly's of California*, 14 Cal.App.4th 612, 619 (1993) ("A plaintiff alleging unfair business practices under these statutes must state with reasonable particularity the facts supporting the statutory elements of the violation.") Plaintiff does not allege that Defendants violated any law.

Here, Plaintiff's UCL claims are wholly inadequate. Plaintiff bases his § 17200 claim upon his allegations at ¶¶ 25-28 of his Complaint that the trustee's sale was conducted in violation of California Civil Code §§ 2923.5, 2323.52-55, and 2924. However, as noted in Section VII, *supra*, California Civil Code §§ 2923.5 and 2923.52-55 did not exist at the time the Notice of Default was recorded. Plaintiff's general allegations of wrongdoing based upon his defective claims are insufficient to state a claim against Defendants under the UCL. Accordingly, Plaintiff's claim for violation of § 17200 should be dismissed without leave to amend.

B. Plaintiff lacks standing due to lack of injury *caused* by Defendants.

Moreover, even though the foreclosure has resulted in Plaintiff' loss of the Subject Property, Plaintiff has failed to allege that he lost the Subject Property as the result of the acts complained of in his first, third and fourth claims. Prior to its amendment in 2004, § 17200 and related provisions permitted any person acting for the general public to sue for relief from unfair competition and did not predicate standing on a showing of injury or damage. *Californians for Disability Rights v. Mervyn's, LLC,* 39 Cal.4th 223, 228 (2006). As amended by Proposition 64, Business and Professions Code §17204 now limits standing in a Section 17200 action to certain specified public officials and to "any person who has suffered injury in fact and has lost money or property as a result of ... unfair competition." *Id.*

Here, Plaintiff did not lose the Subject Property due to a real or imagined technical defect in the foreclosure process. The Subject Property was foreclosed

because Plaintiff defaulted on the Loan, and Plaintiff failed to reinstate the Loan within the statutory time period allowed. Plaintiff never alleges in his Complaint that he attempted to reinstate the Loan prior to foreclosure or that he was prevented from reinstating due to any specific violation of Civil Code § 2924, et seq. Because Plaintiff suffered his loss of property due to his own default on the Loan, and not due to a defect in the foreclosure documents, he lacks standing to sue under § 17200.

XII. PLAINTIFF'S SEVENTH CLAIM FOR VIOLATION OF CALIFORNIA CORPORATIONS CODE §§ 17050, 17051 AND 17456 FAILS

Plaintiff's cause of action for violation of certain provisions of the California Corporations Code fails. Plaintiff alleges that "the State of California and the Secretary requires that every operating LLC be formed and organized under the Beverly-Killea Limited Liability Company as described in *California Corporation Code §§* 17050 and 17051[.]" (Comp., ¶ 199.)

Here, Plaintiff's claim fails for the simple reason that JPMC is not an LLC formed under the laws of California. Rather, JPMC is a Delaware LLC. See, RJN, Exh. 11. Thus, the statutes do not apply to the facts of this case. Indeed, Corporations Code § 17050 relates to the formation requirements of a limited liability company in California and Corporations Code § 17051 pertains to the contents of the article of organization to be prepared in connection with the formation of a limited liability company in California. Accordingly, the cause of action fails on these grounds.

Plaintiff inartfully alleges that JPMC violated state laws, rules and regulations by recorded documents in connection with the non-judicial foreclosure. Plaintiff's vague contentions are without merit. California law requires registration only for foreign LLCs "transacting intrastate business" in California. Transacting "intrastate business" does not encompass all possible business activities in California; it has a specific and limited meaning. To transact intrastate business means "to enter into repeated and successive transactions of business in [California], other than in interstate or foreign commerce." Corp. Code § 17001(ap) (emphasis added). Corp.

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Code § 17001(ap)(2) provides further that it "shall not be considered to be transacting intrastate business" if it conducts one or more types of activity expressly listed in the statute as non-intrastate business. Corp. Code § 17001(ap)(2). Exempted activities include "[s]ecuring or collecting debts or enforcing mortgages and security interests in property securing the debts" (Corp. Code § 17001(ap)(2)(H)) and "[m]aintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes." Corp. Code § 17001(ap)(2)(A). Finally, the section does not require registration for a company to defend itself in a civil action. *See Corp. Code* § 17001(ap)(1)-(2).Therefore, the activities allegedly engaged in by Defendants, including enforcement of the DOT by way of nonjudicial foreclosure, are exempted. Accordingly, the cause of action fails on this ground as well.

Moreover, Plaintiff also fails to state that a violation of these code sections caused him any harm because Plaintiff the alleged failure to form an LLC under the laws of the State of California did not cause his default and the non-judicial foreclosure sale. In addition, the statute only grants the California Secretary of State the authority to take action with respect to a violation. *See Corp. Code* § 17051(e). Thus, there is no basis for a private right of action under the statute for Plaintiff to challenge the foreclosure proceedings or the DOT.

XIII. PLAINTIFF'S EIGHTH CLAIM FOR DECLARATORY RELIEF FAILS

An action under the Declaratory Judgment Act ("DJA"), 28 U.S.C. §2201, requires a district court to "inquire whether there is a case of actual controversy within its jurisdiction." *American States Ins. Co v. Kearns,* 15 F.3d 142, 143-144 (9th Cir. 1994). As to a controversy to invoke declaratory relief, the question is whether there is a "substantial controversy, between parties having adverse legal rights, or sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Cas. Co. v. Pacific Coal & Oil Co.,* 312 U.S. 270 (1941). The United States Supreme Court has further explained that a federal court may decline to address

a claim for declaratory relief where "the relief [a] plaintiff seeks is entirely commensurate with the relief sought through [his] other causes of action. . .[the] declaratory relief claim is duplicative and unnecessary." *Mohammed Adhavein v. Argent Mortgage Co.*, 2009 U.S. Dist. LEXIS 61796, *14 (N.D. Cal. July 17, 2009)

In this claim, Plaintiff fails to allege an actual controversy that is separate and apart from the controversies alleged in his prior seven claims. In fact, this claim merely repeats the allegations from the prior claims that Defendants allegedly violated RESPA, that Defendants have allegedly violated Civil Code §§ 2923.5, 2923.52-55, and 2924, that the NOD was prematurely recorded due to the inclusion of "effective 10/15/2006" on several of the recorded instruments, there are defects regarding Ms. Rosas signatures, and there are issues regarding Ms. Price's signatures on the instruments. Plaintiff's declaratory relief claim does not allege any unique facts or theories that will not be addressed in any of his other claims. As a result, Plaintiff's eighth claim for declaratory relief is duplicative and unnecessary, and should be dismissed.

XIV. PLAINTIFF'S NINTH CLAIM FOR INJUNCTIVE RELIEF FAILS

Plaintiffs' "claim" for injunctive relief fails for three reasons. First, the claim is moot as foreclosure on the Property has already occurred. There is nothing to enjoin.

Second, injunctive relief is not a cause of action, but a remedy. *See, Rose v. J.P. Morgan Chase, N.A.,* 2012 WL 892282 (E.D. Cal. Mar. 14, 2012) ("[c]laims for injunctive relief have been consistently classified under California law as remedies and not valid causes of action in their own rights…"); *Camp v. Board of Supervisors* 123 Cal.App.3d 334, 356 (1981) ["Injunctive relief is a remedy and not, in itself, a cause of action and a cause of action must exist before injunctive relief may be granted"); *see also, County of Del Norte v. City of Crescent City* 71 Cal.App.4th 965, 973 (1999) (a permanent injunction is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action.).

Third, an injunction can be issued only if a plaintiff demonstrates: 1) likelihood of success on the merits; 2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is denied; 3) the threatened injury outweighs any damage the injunction might cause to defendant; and 4) the injunction will not disserve the public interest. *Production Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987); *Owner-Operator Independent Drivers Association, Inc. v. Swift Transportation Co, Inc.*, 367 F.3d 1108, 1111 (9th Cir. 2004). Here, Plaintiffs cannot show a likelihood of prevailing on the merits since the underlying claims upon which the injunction is based are wholly without merit.

As explained throughout this Motion, Plaintiff fails to show that Defendants are liable under any claim asserted in the Complaint and that he is likely to prevail on the merits of any claim at the time of trial. Last, and perhaps most importantly, the foreclosure sale of the Subject Property has already occurred and the Unlawful Detainer proceedings have been completed and judgment rendered against Plaintiff. Thus, there is nothing for this Court to enjoin.

XV. CONCLUSION

For the foregoing reasons, defendants JPMorgan and JPMC respectfully request that the Court dismiss the Complaint in its entirety, without leave to amend.

Respectfully submitted,

DATED: August 13, 2013

ALVARADOSMITH
A Professional Corporation

By: /s/ David J. Masutani
THEODORE E. BACON
DAVID J. MASUTANI

Attorneys for Defendants JPMorgan Chase Bank, N.A., *for itself, erroneously sued as* JP Chase Home Finance, *and as Successor by Merger to* Chase Home Finance LLC, and JPMC Specialty Mortgage LLC, formerly known as WM Specialty Mortgage LLC

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is ALVARADOSMITH, 633 W. Fifth Street, Suite 1100, Los Angeles, CA 90071.

On **August 13, 2013**, I served the foregoing document(s) described as: **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COMPLAINT PURSUANT TO FRCP 12(B)(6) BY DEFENDANTS JPMORGAN CHASE BANK, N.A., *FOR ITSELF, ERRONEOUSLY SUED AS* JP CHASE HOME FINANCE, *AND AS SUCCESSOR BY MERGER TO* CHASE HOME FINANCE LLC, AND JPMC SPECIALTY MORTGAGE LLC, FORMERLY KNOWN AS WM SPECIALTY MORTGAGE LLC** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

PRO SE
Edward C. Tidwell
5157 Roundup Way
Antioch, CA 94531
Tel: (510) 470-8422

☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 633 W. Fifth Street, Los Angeles, California 90071. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

☐ **BY OVERNIGHT MAIL:** By placing the document listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express and/or NORCO OVERNITE agent for delivery.

☐ **BY ELECTRONIC MAIL:** I served the foregoing document by electronic mail to the email address(es) listed on the service list.

☐ **BY PERSONAL SERVICE:** I ***caused to be personally served***, by delivery of a copy of the document(s) listed above, placed in an envelope with the name and address of the person(s) being served, and having First Legal Network, 1517 W. Beverly Blvd., Los Angeles, CA 90026, leave the documents with a receptionist or person in charge of the recipients' offices.

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on **August 13, 2013**, at Los Angeles, California.

Belinda Slack

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